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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C. 20054

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of: )  
 )  
Implementation of the Local )  
Competition Provisions of the ) CC Docket No. 96-98  
Telecommunications Act of 1996 )

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**CONSOLIDATED COMMENTS AND OPPOSITION TO  
SELECTED PETITIONS FOR RECONSIDERATION**

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## **SUMMARY**

Teleport Communications Group Inc. ("TCG") supports the Petitions for Reconsideration submitted by a number of participants that address issues concerning nondiscriminatory access to numbering resources. TCG asserts in its Petition that permanent number portability should be a requirement for the implementation of number overlay plans. Without permanent number portability, overlay plans are anticompetitive and violate the requirement for nondiscriminatory access. AT&T, Cox, and MFS agree with TCG's assertion and accordingly have petitioned the Commission to reconsider its Second Report and Order to require that permanent number portability be instituted as a prerequisite to the implementation of a number overlay plan. At a minimum, the Commission should clarify that states may require permanent number portability for the implementation of number overlay plans within their jurisdictions.

Many petitioners also have requested that the requirement for the assignment of one NXX block to eligible new entrants be rejected. The minimum one NXX assignment to each certified CLEC is of no benefit to wireline carriers who are limited to the use of the number block in merely one rate center that comprises only a fraction of a CLEC's service territory. Even some RBOCs dispute the worth of this requirement, albeit on different grounds from CLECs, thereby demonstrating that the requirement does not achieve the result intended by the Commission. This requirement does not satisfy the nondiscriminatory access standards of the 1996 Act, and should be rejected in favor of proposals that are

currently under consideration in other proceedings and forums to preserve number resources by distributing them across rate centers.

In addition, TCG opposes the petitions by the New York Department of Public Service and the Pennsylvania Public Utility Commission which suggest that mandatory 10-digit dialing is inconvenient for customers and thus should be eliminated. Number overlay plans require callers in the same area to dial different area codes to reach one another. However, for a significant time period, customers served by an overlay area code would be required to dial the more populated existing area code using 10-digit dialing with greater frequency. Because CLECs would be the primary recipients of overlay codes, their customers would be disproportionately inconvenienced by this imbalanced dialing pattern. The anticompetitive effects of an overlay cannot be completely overcome without the implementation of permanent number portability. Mandatory 10-digit dialing, however, can help mitigate, to some extent, the anticompetitive effects inherent in an NPA overlay plan by ensuring that customers of ILECs and CLECs will be treated equally with respect to dialing requirements.

Finally, TCG supports AT&T's petition on the issue of NXX code assignment fees. CLECs should not be charged for code assignment fees beyond those that would be imposed by a neutral number administrator. In this context, the Commission should also conclude that code opening fees, which are distinct from code assignment fees, are prohibited.

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**CONSOLIDATED COMMENTS AND OPPOSITION TO  
SELECTED PETITIONS FOR RECONSIDERATION**

Teleport Communications Group Inc. ("TCG") hereby submits its consolidated comments and opposition to selected petitions for reconsideration of the Local Competition Order issued in the above-captioned docket,<sup>1</sup> promulgating rules to implement certain parts of Section 251 of the Telecommunications Act of 1996 ("1996 Act").<sup>2</sup>

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<sup>1</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, (rel. August 8, 1996) petition for review pending sub nom., Iowa Util. Board et al. v. FCC, No. 96-3321 and consolidated cases (8th Cir.) ("Second Report and Order").

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

## I. INTRODUCTION

As competitive local exchange carriers ("CLECs") enter the local exchange service market and acquire customers that are currently served by incumbent local exchange carriers ("ILECs"), it will be increasingly important that CLECs be afforded nondiscriminatory access to numbering resources. By the Commission's own findings, section 251(b)(3) of the Act requires LECs "to permit competing providers access to telephone numbers that is identical to the access the LEC provides to itself."<sup>3</sup> This standard cannot be met unless CLECs have equal access to numbering resources. Under an overlay plan, nondiscriminatory access cannot be achieved without permanent number portability and mandatory 10-digit dialing. The Second Report and Order should be revised consistent with these principles.

A number of petitioners address this issue in requesting that the Commission reconsider certain aspects of the Second Report and Order. Specifically, TCG supports requests that permanent number portability be required prior to the implementation of an overlay plan and that the Commission affirm the authority of state commissions to implement such a policy. TCG agrees that the requirement for the assignment of one NXX in an NPA does not overcome the anticompetitive aspects of an overlay plan. Accordingly, TCG opposes petitions that request that the Commission rescind the requirement for 10-digit dialing prior to the implementation of all-services overlay plans. Finally, CLECs should not be charged unreasonable fees for NXX code assignments by the number administrator.

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<sup>3</sup> Id. at ¶ 12.

## **II. PERMANENT NUMBER PORTABILITY SHOULD BE A PREREQUISITE TO THE IMPLEMENTATION OF AN OVERLAY PLAN**

Several parties join TCG in requesting that the Commission reconsider its decision not to require permanent number portability prior to the implementation of an all-services overlay. These parties agree that without permanent number portability as a prerequisite for an NPA overlay plan, ILECs will gain a clear competitive advantage over CLECs. The deficiencies inherent in an interim number portability solution will result in a CLEC's inability to offer service to customers that is the same as or superior to the quality of service offered by the ILEC. Simply stated, the statutory mandate for dialing parity cannot be achieved without permanent number portability.<sup>4</sup> Therefore, the Commission must impose this requirement to ensure that permanent number portability is available prior to the implementation of an overlay plan.

MFS fairly summarizes the anticompetitive harms of overlay plans in the absence of corrective conditions:

Overlays that result in a disproportionate share of numbers from the overlay NPA assigned to new entrants while incumbent carriers retain the advantages of the existing number inventory distorts [sic] the market and raise a barrier to entry. Without permanent service provider local number portability, consumers would be reluctant to switch providers if they were assigned a number in the overlay NPA. Thus, overlays would restrict customer mobility, and create a barrier to entry by artificially limiting the ability of new entrants to attract customers.<sup>5</sup>

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<sup>4</sup> See AT&T at 5.

<sup>5</sup> MFS at 4.

TCG agrees with Cox that "the Commission was correct to require safeguards before any overlay can be implemented," but that the current conditions — mandatory 10-digit dialing and the assignment of one NXX from the existing NPA — fall short of the protections that are necessary to address the inherently anticompetitive aspects of overlay plans.<sup>6</sup>

Other petitioners agree with TCG that interim number portability is an inferior alternative to permanent number portability. Cox correctly states that "[i]nterim number portability, in effect, requires new entrants in an area covered by an overlay to choose between limiting the services and quality they can offer to their customers or having to serve those customers through the unfamiliar, undesirable numbers in the overlay code."<sup>7</sup> Similarly, MFS finds that "interim number portability entails significant costs, makes inefficient use of scarce numbering resources, and cannot be used in all customer situations."<sup>8</sup> Indeed, AT&T argues that irrespective of the implementation of an overlay plan, "new entrants will be disadvantaged by interim number portability measures because their customers will be forced either to give up their current telephone numbers, or to accept lower quality service."<sup>9</sup>

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<sup>6</sup> See Cox at 3; see also MFS at 5.

<sup>7</sup> Cox at 5.

<sup>8</sup> MFS at 7-8.

<sup>9</sup> AT&T at 9.



TCG agrees with Cox that "[w]ithout the additional precondition of permanent number portability, incumbent LECs will continue to have the incentive to seek to impose overlays as a means to thwart competition."<sup>10</sup> Because permanent number portability is not on the competitive checklist under section 271, RBOCs have no incentive to implement permanent number portability, which would "greatly enhance the ability of new entrants to compete with incumbents."<sup>11</sup> In fact, Ameritech demonstrates in its Petition for Clarification or Reconsideration that some RBOCs will fight this and other measures intended to provide CLECs with a level playing ground, arguing that Congress did not intend to require equal treatment in access to telephone numbers, operator services, directory assistance and directory listings.

Ameritech erroneously claims that a distinction can be made between the statutory language requiring "nondiscriminatory access" and the Commission's finding that this requires a duty to provide "the same access that the local exchange carrier receives with respect to such services."<sup>12</sup> However, it is unclear how LECs can provide unequal yet nondiscriminatory access to telephone numbers. The Commission must retain its standard as stated and require that access to telephone numbers be provided to CLECs on the same basis that a LEC makes them available to itself. Any other standard falls short of the statutory

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<sup>10</sup> Cox at 2; see also id. at 6-7.

<sup>11</sup> Id. at 6.

<sup>12</sup> See Ameritech at 7 (quoting Second Report and Order at ¶ 101).

requirement, favors ILECs, and creates anticompetitive conditions in the local exchange service market.

In the event that the Commission does not require permanent number portability, state commissions must be given the flexibility to adopt such a policy.<sup>13</sup> Adoption of this policy will permit states to require permanent number portability at such time that an overlay plan is judged to be the appropriate means of relief for number exhaust

### **III. THE ASSIGNMENT OF ONE NXX CODE FROM THE EXISTING AREA CODE PRIOR TO AN OVERLAY PLAN DOES NOT ADDRESS ANTICOMPETITIVE EFFECTS OF THE PLAN**

The assignment of one NXX within an existing NPA falls short of providing CLECs with nondiscriminatory access to number resources. As explained by MFS, the Commission "fails to recognize that one NXX is required for each 'rate center,' not merely for each NPA."<sup>14</sup> The result is that for a CLEC that intends to serve multiple rate centers within a NPA, the assignment of a single NXX code will do little for the new entrant."<sup>15</sup> Cox appropriately characterizes the assignment of

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<sup>13</sup> Cf. Cox at 7 (recommending that states can balance the timing of overlay plans and permanent number portability).

<sup>14</sup> MFS at 8 (footnote omitted); see also AT&T at 6 (finding that the Commission's decision on this issue "appears to rest on a misconception of industry practice regarding assignment of NXX code").

<sup>15</sup> Cox at 4.

one NXX code under the current number assignment structure as "merely cosmetic."<sup>16</sup>

To address this deficiency, TCG has demonstrated in another proceeding that there are a number of methods for number preservation by which NXX blocks may be spread across rate centers.<sup>17</sup> For example, TCG's Number Crunch Solution, which permits a single NXX code to be utilized over multiple rate centers, would permit carriers to utilize more efficiently the numbers assigned within a single NXX block. The Number Crunch Solution — along with other proposals — has been considered by the Rating and Routing Workshop-288 of the Industry Carriers Compatibility Forum ("ICCF"). TCG and other carriers have been involved in the study and evaluation of these various plans. However, ILECs have stalled repeatedly consideration of the proposals. As TCG stated in another proceeding, at a minimum, the Commission should set a schedule for the conclusion of these issues and implementation of its or another similar proposal.<sup>18</sup>

Finally, BellSouth and NYNEX also oppose the implementation of the one NXX code assignment requirement. BellSouth objects that the assignment of NXX codes as proposed would accelerate number exhaust and in this event, it would be

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<sup>16</sup> Id. at 5.

<sup>17</sup> See Petition for Declaratory Ruling to Impose Competitively Neutral Guidelines for Numbering Plan Administration, NSD File No. 96-9, TCG Reply Comments (October 1, 1996), 11-13.

<sup>18</sup> See id. at 11-16.

"too late" to shift to a code split relief plan.<sup>19</sup> NYNEX agrees that if all the eligible carriers cannot be accommodated, that "it will likely be too late to develop and implement an area code split" and that code administrators will have to reserve area codes in advance to meet this requirement.<sup>20</sup> Although these carriers do not share the competitive concerns of CLECs, their petitions demonstrate that the assignment of only one NXX code from the existing area code to each eligible carrier in the event of an overlay plan should be eliminated.

**IV. THE COMMISSION SHOULD RETAIN THE CONDITION THAT MANDATORY 10-DIGIT DIALING BE IMPLEMENTED IN THE EVENT OF AN OVERLAY PLAN**

TCG agrees with Cox that mandatory 10-digit dialing "addresses the dialing disparities that could arise in an overlay."<sup>21</sup> Without 10-digit dialing, "[t]he unfamiliarity of the new area code, which will last for several years until the area code is mostly filled, will make it hard for new entrants to attract customers."<sup>22</sup> Therefore, the Commission should clarify that mandatory 10-digit dialing is required where overlays will be implemented.<sup>23</sup>

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<sup>19</sup> BellSouth at 8.

<sup>20</sup> NYNEX at 12.

<sup>21</sup> See Cox at 4.

<sup>22</sup> Id. at 4.

<sup>23</sup> MFS at 7.

The Pennsylvania Public Utility Commission ("PPUC") and the New York Department of Public Service ("NYDPS") have requested that the Commission eliminate the requirement for mandatory 10-digit dialing. The NYDPS challenges mandatory 10-digit dialing on jurisdictional grounds.<sup>24</sup> However, the Commission has exclusive jurisdiction under the 1996 Act to oversee numbering administration.<sup>25</sup> The Commission has correctly determined that without safeguards like mandatory 10-digit dialing, number overlay plans will discriminate against CLECs and their customers. Therefore, pursuant to its exclusive jurisdiction over numbering administration, the Commission has appropriately required that mandatory 10-digit dialing is required when an overlay plan is implemented.

The PPUC and NYDPS believe that 10-digit dialing is inconvenient to customers. The PPUC claims that "[i]mposition of ten-digit dialing upon customers when not necessary will lead to customer aggravation and inconvenience."<sup>26</sup> Yet, implementation of an overlay plan without mandatory 10-digit dialing shifts this "inconvenience to customers" only to the customers of CLECs. These customers will be required, therefore, to place 10-digit calls out of the overlay code on a disproportionate basis. In addition, ILECs will have a readily available supply of numbers in the existing area code for the foreseeable future. They have been

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<sup>24</sup> NYDPS at 3-5.

<sup>25</sup> 47 U.S.C. § 251(e).

<sup>26</sup> PPUC at 4; see also NYDPS at 8.

able to warehouse numbers and are the beneficiaries of the number churn, whereby numbers from the existing area code are returned for their use.<sup>27</sup> The PPUC claims that its proposal does not appear to have any anticompetitive impact because even new ILEC customers will be required to make 10-digit calls from the overlay code.<sup>28</sup> However, ILECs will have available numbers in the existing area code for a considerable time, while CLECs will be assigning numbers from the overlay code immediately and with regularity. This disparity is the hallmark of an anticompetitive and discriminatory practice.

#### **V. ILECS SHOULD NOT BE PERMITTED TO ASSESS UNREASONABLE CODE ASSIGNMENT FEES**

TCG supports the petition by AT&T requesting that the Commission clarify what constitutes reasonable fees that an ILEC may charge for code assignments. Code assignment charges, as the Commission has referred to them and as TCG addresses here, are assessed by the code administrator in connection with the costs of physically assigning NXX codes to carriers. The Commission determined that "any incumbent LEC charging competing carriers fees for assignment of [central office] codes may do so only if the incumbent LEC charges one uniform fee for all carriers, including itself or its affiliates."<sup>29</sup> AT&T correctly concludes that ILECS should have a "bright-line" rule to guide their actions with respect to

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<sup>27</sup> See Second Report and Order at ¶ 289.

<sup>28</sup> PPUC at 5.

<sup>29</sup> Second Report and Order at ¶ 332.

this issue and to ensure that CLECs are afforded uniform protection from charges for code assignments that "vary widely."<sup>30</sup>

Code assignment fees, however, should be distinguished from code opening fees, which are charges assessed by a carrier for opening the NXX codes of another carrier in the switches of the first carrier. TCG opposes the assessment of code opening charges. No carrier should be allowed to charge other carriers for the internal costs of its own network for opening in its own switches the codes assigned to another carrier. Any expense associated with this activity is a cost of doing business as an interconnector with others in the competitive telecommunications market, such that each carrier should bear its own costs. The imposition of onerous code opening fees would be a barrier to entry by new competitors. Therefore, the Commission should clarify that code opening fees, which are distinct from code assignment costs, are not permitted.

The Commission should adopt AT&T's proposal that code assignment fees charged by an ILEC for NXX assignments must be limited to the forward-looking, economically efficient costs of numbering administration, to the extent that there are any.<sup>31</sup> This standard would safeguard against CLECs absorbing ILEC costs that would otherwise not be incurred by a neutral numbering administrator. However, the Commission should also clarify that code opening fees are an internal

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<sup>30</sup> See AT&T at 10.

<sup>31</sup> Id. at 11 (emphasis in original).

cost of doing business, which should not be passed on to the interconnecting carrier.

## **VI. CONCLUSION**

For the reasons stated herein, TCG urges the Commission to prohibit anticompetitive NPA overlay plans and to require that NPA overlays cannot be implemented in the absence of permanent number portability and without mandatory 10-digit dialing. The assignment of one NXX from an existing area code does not address the anticompetitive effects of an overlay plan, and this requirement should be eliminated. Finally, the Commission should clarify that ILECs may only charge CLECs the forward-looking economically efficient costs of code assignments and that code opening fees are prohibited.

Respectfully submitted,



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## **CERTIFICATE OF SERVICE**

I, Marjorie A. Schroeder, hereby certify that copy of the foregoing Consolidated Comments and Opposition for Selected Petitions for Reconsideration was mailed by first-class, postage prepaid mail on this 20th day of November, 1996 to the following:

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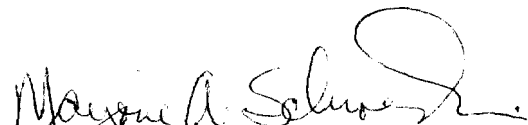
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